

Senate Study Bill 1142

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to various provisions administered by the
2 insurance division of the department of commerce concerning
3 premium tax refunds, the interstate insurance compact, insurer
4 insolvency proceedings, individual health insurance, the small
5 employer carrier reinsurance program, the Iowa comprehensive
6 health association, fire insurance policies, the Iowa
7 insurance guaranty association, the FAIR plan, motor vehicle
8 service contracts, investments by county and state mutual
9 associations, reciprocal or interinsurance contract premium
10 rates, unauthorized activity of insurance producers, and
11 annuity contracts for cemetery and funeral merchandise and
12 funeral services, and making fees and penalties applicable and
13 providing effective and retroactive applicability dates.
14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
15 TLSB 1155DP 81
16 av/pj/5

PAG LIN

1 1 Section 1. Section 322.19, subsection 2, paragraph a, Code
1 2 2005, is amended to read as follows:

1 3 a. A ~~motor vehicle~~ service contract as defined in section
1 4 516E.1.

1 5 Sec. 2. Section 432.1, subsection 6, paragraph d, Code
1 6 2005, is amended to read as follows:

1 7 d. The sums prepaid by a company or association under this
1 8 subsection shall be allowed as credits against its premium tax
1 9 liability for the calendar year during which the payments are
1 10 made. If a prepayment made under this subsection exceeds the
1 11 annual premium tax liability, the excess shall be allowed as a
1 12 credit against subsequent prepayment or tax liabilities. The
1 13 commissioner of insurance shall authorize the department of
1 14 revenue to make a cash refund to an insurer, in lieu of a
1 15 credit against subsequent prepayment or tax liabilities, if
1 16 the insurer demonstrates the inability to recoup the funds
1 17 paid via a credit. The commissioner shall adopt rules
1 18 establishing eligibility criteria for such a refund and a
1 19 refund process. The commissioner may suspend or revoke the
1 20 license of a company or association that fails to make a
1 21 prepayment on or before the due date.

1 22 Sec. 3. Section 505A.1, Article II, section 8, Code 2005,
1 23 is amended to read as follows:

1 24 8. "Member" means the person chosen by a compacting state
1 25 as its representative to the commission, or the person's
1 26 designee. The commissioner of insurance shall be the
1 27 representative member of the compact for the state of Iowa.

1 28 Sec. 4. Section 507C.2, Code 2005, is amended by adding
1 29 the following new subsections:

1 30 NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a
1 31 specific person, means a person that directly or indirectly,
1 32 through one or more intermediaries, controls or is controlled
1 33 by, or is under common control with, the person specified.

1 34 NEW SUBSECTION. 2A. "Commodity contract" means any of the
1 35 following:

2 1 a. A contract for the purchase or sale of a commodity for
2 2 future delivery on, or subject to the rules of, a board of
2 3 trade designated as a contract market by the commodity futures
2 4 trading commission under the federal Commodity Exchange Act, 7
2 5 U.S.C. } 1 et seq., or a board of trade outside the United

2 6 States.

2 7 b. An agreement that is subject to regulation under
2 8 section 19 of the federal Commodity Exchange Act, 7 U.S.C. } 1
2 9 et seq., and that is commonly known to the commodities trade
2 10 as a margin account, margin contract, leverage account, or
2 11 leverage contract.

2 12 c. An agreement or transaction that is subject to
2 13 regulation under section 4c(b) of the federal Commodity
2 14 Exchange Act, 7 U.S.C. } 1 et seq., and that is commonly known
2 15 to the commodities trade as a commodity option.

2 16 NEW SUBSECTION. 2B. "Control" means the same as defined
2 17 in section 521A.1, subsection 3.

2 18 NEW SUBSECTION. 8A. "Forward contract" means a contract
2 19 for the purchase, sale, or transfer of a commodity, as defined
2 20 in section 1 of the federal Commodity Exchange Act, 7 U.S.C. }
2 21 1 et seq., or any similar good, article, service, right, or
2 22 interest that is presently or in the future becomes the
2 23 subject of dealing in the forward contract trade, or product
2 24 or byproduct thereof, with a maturity date more than two days
2 25 after the date the contract is entered into, including, but
2 26 not limited to, a repurchase transaction, reverse repurchase
2 27 transaction, consignment, lease, swap, hedge transaction,
2 28 deposit, loan, option, allocated transaction, unallocated
2 29 transaction, or a combination of them or option on any of
2 30 them. "Forward contract" does not include a commodity
2 31 contract.

2 32 NEW SUBSECTION. 12A. "Netting agreement" means an
2 33 agreement, including terms and conditions incorporated by
2 34 reference therein, including a master agreement, which master
2 35 agreement, together with all schedules, confirmations,
3 1 definitions, and addenda thereto and transactions under any
3 2 thereof, shall be treated as one netting agreement, that
3 3 documents one or more transactions between parties to the
3 4 agreement for or involving one or more qualified financial
3 5 contracts and that provides for the netting or liquidation of
3 6 qualified financial contracts or present or future payment
3 7 obligations or payment entitlements thereunder, including
3 8 liquidation or closeout values relating to such obligations or
3 9 entitlements among the parties to the netting agreement.

3 10 NEW SUBSECTION. 13A. "Qualified financial contract" means
3 11 a commodity contract, forward contract, repurchase agreement,
3 12 securities contract, swap agreement, and any similar agreement
3 13 that the commissioner determines by regulation, resolution, or
3 14 order to be a qualified financial contract for the purposes of
3 15 this chapter.

3 16 NEW SUBSECTION. 15A. "Repurchase agreement" means an
3 17 agreement, including related terms, that provides for the
3 18 transfer of certificates of deposit, eligible bankers'
3 19 acceptances, or securities that are direct obligations of, or
3 20 that are fully guaranteed as to principal and interest by, the
3 21 United States or an agency of the United States against the
3 22 transfer of funds by the transferee of the certificates of
3 23 deposit, eligible bankers' acceptances or securities, with a
3 24 simultaneous agreement by the transferee to transfer to the
3 25 transferor certificates of deposit, eligible bankers'
3 26 acceptances, or securities as described above, at a date
3 27 certain not later than one year after the transfers or on
3 28 demand against the transfer of funds. For the purposes of
3 29 this definition, the items that may be subject to a repurchase
3 30 agreement include, but are not limited to, mortgage-related
3 31 securities, a mortgage loan, and an interest in a mortgage
3 32 loan, but shall not include any participation in a commercial
3 33 mortgage loan, unless the commissioner determines by rule,
3 34 resolution, or order to include the participation within the
3 35 meaning of the term. Repurchase agreement also applies to a
4 1 reverse repurchase agreement.

4 2 NEW SUBSECTION. 16A. "Securities contract" means a
4 3 contract for the purchase, sale, or loan of a security,
4 4 including an option for the repurchase or sale of a security,
4 5 certificate of deposit, or group or index of securities,
4 6 including an interest therein or based on the value thereof,
4 7 or an option entered into on a national securities exchange
4 8 relating to foreign currencies, or the guarantee of a
4 9 settlement of cash or securities by or to a securities
4 10 clearing agency. For the purposes of this definition, the
4 11 term "security" includes a mortgage loan, mortgage-related
4 12 securities, and an interest in any mortgage loan or mortgage=
4 13 related security.

4 14 NEW SUBSECTION. 18A. "Swap agreement" means an agreement,
4 15 including the terms and conditions incorporated by reference
4 16 in an agreement, that is a rate swap agreement, basis swap,

4 17 commodity swap, forward rate agreement, interest rate future,
4 18 interest rate option, forward foreign exchange agreement, spot
4 19 foreign exchange agreement, rate cap agreement, rate floor
4 20 agreement, rate collar agreement, currency swap agreement,
4 21 cross-currency rate swap agreement, currency future, or
4 22 currency option or any other similar agreement, and includes
4 23 any combination of agreements and an option to enter into an
4 24 agreement.

4 25 Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL
4 26 CONTRACTS.

4 27 1. Notwithstanding any other provision of this chapter to
4 28 the contrary, including any other provision of this chapter
4 29 permitting the modification of contracts, or other law of a
4 30 state, a person shall not be stayed or prohibited from
4 31 exercising any of the following:

4 32 a. A contractual right to terminate, liquidate, or close
4 33 out any netting agreement or qualified financial contract with
4 34 an insurer because of any of the following:

4 35 (1) The insolvency, financial condition, or default of the
5 1 insurer at any time, provided that the right is enforceable
5 2 under applicable law other than this chapter.

5 3 (2) The commencement of a formal delinquency proceeding
5 4 under this chapter.

5 5 b. Any right under a pledge, security, collateral, or
5 6 guarantee agreement or any other similar security arrangement
5 7 or credit support document relating to a netting agreement or
5 8 qualified financial contract.

5 9 c. Subject to any provision of section 507C.30, subsection
5 10 2, any right to set off or net out any termination value,
5 11 payment amount, or other transfer obligation arising under or
5 12 in connection with a netting agreement or qualified financial
5 13 contract where the counterparty or its guarantor is organized
5 14 under the laws of the United States or a state or foreign
5 15 jurisdiction approved by the securities valuation office or
5 16 the national association of insurance commissioners as
5 17 eligible for netting.

5 18 2. Upon termination of a netting agreement, the net or
5 19 settlement amount, if any, owed by a nondefaulting party to an
5 20 insurer against which an application or petition has been
5 21 filed under this chapter shall be transferred to or on the
5 22 order of the receiver for the insurer, even if the insurer is
5 23 the defaulting party, notwithstanding any provision in the
5 24 netting agreement that may provide that the nondefaulting
5 25 party is not required to pay any net or settlement amount due
5 26 to the defaulting party upon termination. Any limited two=
5 27 way payment provision in a netting agreement with an insurer
5 28 that has defaulted shall be deemed to be a full two-way
5 29 payment provision as against the defaulting insurer. Any such
5 30 amount shall, except to the extent it is subject to one or
5 31 more secondary liens or encumbrances, be a general asset of
5 32 the insurer.

5 33 3. In making any transfer of a netting agreement or
5 34 qualified financial contract of an insurer subject to a
5 35 proceeding under this chapter, the receiver shall do either of
6 1 the following:

6 2 a. Transfer to one party, other than an insurer subject to
6 3 a proceeding under this chapter, all netting agreements and
6 4 qualified financial contracts between a counterparty or any
6 5 affiliate of the counterparty and the insurer that is the
6 6 subject of the proceeding, including all of the following:

6 7 (1) All rights and obligations of each party under each
6 8 such netting agreement and qualified financial contract.

6 9 (2) All property, including any guarantees or credit
6 10 support documents, securing any claims of each party under
6 11 each such netting agreement and qualified financial contract.

6 12 b. Transfer none of the netting agreements, qualified
6 13 financial contracts, rights, obligations, or property referred
6 14 to in paragraph "a" with respect to the counterparty and any
6 15 affiliate of the counterparty.

6 16 4. If a receiver for an insurer makes a transfer of one or
6 17 more netting agreements or qualified financial contracts, the
6 18 receiver shall use the receiver's best efforts to notify any
6 19 person who is a party to the netting agreements or qualified
6 20 financial contracts of the transfer by noon of the receiver's
6 21 local time on the business day following the transfer. For
6 22 purposes of this subsection, "business day" means a day other
6 23 than a Saturday, Sunday, or any day on which either the New
6 24 York stock exchange or the federal reserve bank of New York is
6 25 closed.

6 26 5. Notwithstanding any other provision of this chapter to
6 27 the contrary, a receiver shall not avoid a transfer of money

6 28 or other property arising under or in connection with a
6 29 netting agreement or qualified financial contract, or any
6 30 pledge security, collateral, or guarantee agreement or any
6 31 other similar security arrangement or credit support document
6 32 relating to a netting agreement or qualified financial
6 33 contract, that is made before the commencement of a formal
6 34 delinquency proceeding under this chapter. However, a
6 35 transfer may be avoided under section 507C.28 if the transfer
7 1 was made with actual intent to hinder, delay, or defraud the
7 2 insurer, a receiver appointed for the insurer, or existing or
7 3 future creditors.

7 4 6. In exercising any of its powers under this chapter to
7 5 disaffirm or repudiate a netting agreement or qualified
7 6 financial contract, the receiver must take action with respect
7 7 to each netting agreement or qualified financial contract and
7 8 all transactions entered into in connection therewith, in its
7 9 entirety. Notwithstanding any other provision of this chapter
7 10 to the contrary, any claim of a counterparty against the
7 11 estate arising from the receiver's disaffirmance or
7 12 repudiation of a netting agreement or qualified financial
7 13 contract that has not been previously affirmed in the
7 14 liquidation or in the immediately preceding rehabilitation
7 15 case shall be determined and shall be allowed or disallowed as
7 16 if the claim had arisen before the date of the filing of the
7 17 petition for liquidation or, if a rehabilitation proceeding is
7 18 converted to a liquidation proceeding, as if the claim had
7 19 arisen before the date of filing the petition for
7 20 rehabilitation. The amount of the claim shall be the actual
7 21 direct compensatory damages determined as of the date of the
7 22 disaffirmance or repudiation of the netting agreement or
7 23 qualified financial contract. The term "actual direct
7 24 compensatory damages" does not include punitive or exemplary
7 25 damages, damages for lost profit or lost opportunity, or
7 26 damages for pain and suffering, but does include normal and
7 27 reasonable costs of cover or other reasonable measures of
7 28 damages utilized in the derivatives market for the contract
7 29 and agreement claims.

7 30 7. The term "contractual right" as used in this section
7 31 includes any right, whether or not evidenced in writing,
7 32 arising under statutory or common law, a rule or bylaw of a
7 33 national securities exchange, national securities clearing
7 34 organization or securities clearing agency, a rule or bylaw,
7 35 or a resolution of the governing body of a contract market or
8 1 its clearing organization, or under law merchant.

8 2 8. This section shall not apply to persons who are
8 3 affiliates of the insurer that is the subject of the
8 4 proceeding.

8 5 9. All rights of a counterparty under this chapter shall
8 6 apply to netting agreements and qualified financial contracts
8 7 entered into on behalf of the general account or separate
8 8 accounts, provided that the assets of each separate account
8 9 are available only to counterparties to netting agreements and
8 10 qualified financial contracts entered into on behalf of that
8 11 separate account.

8 12 Sec. 6. Section 507C.30, subsection 2, paragraph a,
8 13 subparagraphs (4) and (5), Code 2005, are amended to read as
8 14 follows:

8 15 (4) The obligation of the person is owed to the affiliate
8 16 of the insurer, or any other entity or association other than
8 17 the insurer.

8 18 ~~(4)~~ (5) The obligation of the person is to pay an
8 19 assessment levied against the members or subscribers of the
8 20 insurer, or is to pay a balance upon a subscription to the
8 21 capital stock of the insurer, or is in any other way in the
8 22 nature of a capital contribution.

8 23 ~~(5)~~ (6) The obligation of the person is to pay earned
8 24 premiums to the insurer.

8 25 Sec. 7. Section 513B.12, Code 2005, is amended by adding
8 26 the following new subsection:

8 27 NEW SUBSECTION. 6. During the period of time that the
8 28 operation of the small employer carrier reinsurance program is
8 29 suspended pursuant to section 513B.13, subsection 14, a small
8 30 employer carrier is not required to make an application to
8 31 become a risk=assuming carrier pursuant to this section.

8 32 Sec. 8. Section 513B.13, subsection 3, Code 2005, is
8 33 amended by adding the following new paragraph:

8 34 NEW PARAGRAPH. e. During the period of time that the
8 35 program is suspended pursuant to subsection 14, the size of
9 1 the board may be reduced with the approval of the
9 2 commissioner.

9 3 Sec. 9. Section 513B.17, subsection 4, Code 2005, is

9 4 amended by striking the subsection.

9 5 Sec. 10. Section 513C.6, Code 2005, is amended by adding
9 6 the following new subsection:

9 7 NEW SUBSECTION. 7. An individual who has coverage as a
9 8 dependent under a basic or standard health benefit plan may,
9 9 when that individual is no longer a dependent under such
9 10 coverage, elect to continue coverage under the basic or
9 11 standard health benefit plan if the individual so elects
9 12 immediately upon termination of the coverage under which the
9 13 individual was covered as a dependent.

9 14 Sec. 11. Section 514B.13, unnumbered paragraph 2, Code
9 15 2005, is amended to read as follows:

9 16 Health maintenance organizations providing services
9 17 exclusively on a group contract basis may limit the open
9 18 enrollment provided for in this section to all members of the
9 19 group covered by the contract, including those members of the
9 20 group who previously waived coverage.

9 21 Sec. 12. Section 514E.2, subsection 1, paragraph a, Code
9 22 2005, is amended to read as follows:

9 23 a. All carriers and all organized delivery systems
9 24 licensed by the director of public health providing health
9 25 insurance or health care services in Iowa, whether on an
9 26 individual or group basis, and all other insurers designated
9 27 by the association's board of directors and approved by the
9 28 commissioner shall be members of the association.

9 29 Sec. 13. Section 514E.2, subsection 5, paragraph 1, Code
9 30 2005, is amended to read as follows:

9 31 1. Develop a method of advising applicants of the
9 32 availability of other coverages outside the association, ~~and~~
9 33 ~~shall promulgate a list of health conditions the existence of~~
9 34 ~~which would make an applicant eligible without demonstrating a~~
9 35 ~~rejection of coverage by one carrier.~~

10 1 Sec. 14. Section 514E.2, subsection 7, Code 2005, is
10 2 amended by adding the following new unnumbered paragraph:

10 3 NEW UNNUMBERED PARAGRAPH. For purposes of this subsection,
10 4 "total health insurance premiums" and "payments for subscriber
10 5 contracts" include, without limitation, premiums or other
10 6 amounts paid to or received by a member for individual and
10 7 group health plan care coverage provided under any chapter of
10 8 the Code or Acts, and "paid losses" includes, without
10 9 limitation, claims paid by a member operating on a self-funded
10 10 basis for individual and group health plan care coverage
10 11 provided under any chapter of the Code or Acts. For purposes
10 12 of calculating and conducting the assessment, the association
10 13 shall have the express authority to require members to report
10 14 on an annual basis each member's total health insurance
10 15 premiums and payments for subscriber contracts and paid
10 16 losses. A member is liable for its share of the assessment
10 17 calculated in accordance with this section regardless of
10 18 whether it participates in the individual insurance market.

10 19 Sec. 15. Section 514E.7, subsection 1, Code 2005, is
10 20 amended by adding the following new paragraphs:

10 21 NEW PARAGRAPH. d. That the individual has a health
10 22 condition that is established by the association's board of
10 23 directors, with the approval of the commissioner, to be
10 24 eligible for plan coverage.

10 25 NEW PARAGRAPH. e. That the individual has coverage under
10 26 a basic or standard health benefit plan under chapter 513C.

10 27 Sec. 16. Section 514E.8, subsection 1, Code 2005, is
10 28 amended to read as follows:

10 29 1. An association policy shall contain provisions under
10 30 which the association is obligated to renew the coverage for
10 31 an individual until the day the individual becomes eligible
10 32 for Medicare coverage based on age, provided that any
10 33 individual who is covered by an association policy and is
10 34 eligible for Medicare coverage based on age prior to January
10 35 1, 2005, may continue to renew the coverage under the
11 1 association policy.

11 2 Sec. 17. Section 515.138, sixth subsection, paragraph
11 3 entitled perils not included, Code 2005, is amended to read as
11 4 follows:

11 5 PERILS NOT INCLUDED. This company shall not be liable for
11 6 loss by fire or other perils insured against in this policy
11 7 caused, directly or indirectly, by: (a) Enemy attack by armed
11 8 forces, including action taken by military, naval or air
11 9 forces in resisting an actual or an immediately impending
11 10 enemy attack; (b) invasion; (c) insurrection; (d) rebellion;
11 11 (e) revolution; (f) civil war; (g) usurped power; (h) order of
11 12 any civil authority except acts of destruction at the time of
11 13 and for the purpose of preventing the spread of fire, provided
11 14 that such fire did not originate from any of the perils

11 15 excluded by this policy; (i) neglect of ~~the an~~ insured to use
11 16 all reasonable means to save and preserve the property at and
11 17 after a loss, or when the property is endangered by fire in
11 18 neighboring premises; (j) nor shall this company be liable for
11 19 loss by theft.

11 20 Sec. 18. Section 515.138, sixth subsection, paragraph
11 21 entitled concealment == fraud, Code 2005, is amended to read
11 22 as follows:

11 23 CONCEALMENT == FRAUD. This entire policy shall be void if,
11 24 whether before or after a loss, ~~the an~~ insured has willfully
11 25 concealed or misrepresented any material fact or circumstance
11 26 concerning this insurance or the subject thereof, or the
11 27 interest of ~~the an~~ insured therein, or in case of any fraud or
11 28 false swearing by ~~the an~~ insured relating thereto.

11 29 Sec. 19. Section 515.138, sixth subsection, paragraph
11 30 entitled conditions suspending or restricting insurance, Code
11 31 2005, is amended to read as follows:

11 32 CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless
11 33 otherwise provided in writing added hereto this company shall
11 34 not be liable for loss occurring under any of the following
11 35 circumstances:

12 1 a. While the hazard is created or increased by any means
12 2 within the control or knowledge of ~~the an~~ insured ~~or.~~

12 3 b. While a described building, whether intended for
12 4 occupancy by owner or tenant, is vacant or unoccupied beyond a
12 5 period of sixty consecutive days ~~or.~~

12 6 c. As a result of explosion or riot, unless fire ensue,
12 7 and in that event for loss by fire only.

12 8 Sec. 20. Section 515B.2, subsection 4, paragraph b,
12 9 subparagraph (7), Code 2005, is amended to read as follows:

12 10 (7) That would otherwise be a covered claim, but is an
12 11 obligation to or on behalf of a person who has a net worth, ~~on~~
~~12 12 the date of the occurrence giving rise to the claim,~~ greater
12 13 than that allowed by the guarantee fund law of the state of
12 14 residence of the claimant, and which state has denied coverage
12 15 to that claimant on that basis.

12 16 Sec. 21. Section 515B.17, Code 2005, is amended to read as
12 17 follows:

12 18 515B.17 TIMELY FILING OF CLAIMS.

12 19 Notwithstanding any other provision of this chapter, a
12 20 covered claim shall not include any claim filed with the
12 21 association after twenty-four months from the date of the
12 22 order of liquidation or after the final date set by the court
12 23 for the filing of claims against the insolvent insurer or its
12 24 receiver, whichever occurs first.

12 25 Sec. 22. Section 515F.36, subsection 2, Code 2005, is
12 26 amended to read as follows:

12 27 2. The committee shall consist of seven members, ~~one of~~
~~12 28 whom.~~

12 29 a. Five of the members shall be elected ~~by to~~ the
12 30 committee, with one member from each of the following:

12 31 a. (1) American insurance association.

12 32 b. (2) Alliance of American insurers Property casualty
12 33 insurers association of America.

12 34 c. ~~National association of independent insurers.~~

12 35 d. (3) Iowa insurance institute.

13 1 e. (4) Mutual insurance association of Iowa.

13 2 f. (5) Independent insurance agents of Iowa.

13 3 g. b. All other insurers Two of the members shall be
13 4 elected to the committee by other insurer members of the plan.

13 5 Sec. 23. Section 516E.1, Code 2005, is amended to read as
13 6 follows:

13 7 516E.1 DEFINITIONS.

13 8 For the purposes of this chapter:

13 9 1. "Administrator" means the deputy administrator
13 10 appointed pursuant to section 502.601.

13 11 ~~1. 2. Commissioner" means the commissioner of insurance~~
13 12 ~~as provided in section 505.1 or the deputy administrator~~
~~13 13 appointed under section 502.601.~~

13 14 3. "Maintenance agreement" means a contract of limited
13 15 duration that provides for scheduled maintenance only.

13 16 ~~2. 4. "Mechanical breakdown insurance" means a policy,~~
13 17 ~~contract, or agreement that undertakes to perform or provide~~
13 18 ~~repair or replacement service, or indemnification for that~~
13 19 ~~service, for the operational or structural failure of a motor~~
13 20 ~~vehicle due to a defect in materials or skill of work or~~
13 21 ~~normal wear and tear, and that is issued by an insurance~~
13 22 ~~company authorized to do business in this state.~~

13 23 ~~3. 5. "Motor vehicle" means any self-propelled vehicle~~
13 24 ~~subject to registration under chapter 321.~~

13 25 ~~4. "Motor vehicle service contract" or "service contract"~~

~~13 26 means a contract or agreement given for consideration over and~~
~~13 27 above the lease or purchase price of a new or used motor~~
~~13 28 vehicle having a gross vehicle weight rating of less than~~
~~13 29 sixteen thousand pounds that undertakes to perform or provide~~
~~13 30 repair or replacement service, or indemnification for that~~
~~13 31 service, for the operational or structural failure of a motor~~
~~13 32 vehicle due to a defect in materials or skill of work or~~
~~13 33 normal wear and tear, but does not include mechanical~~
~~13 34 breakdown insurance or maintenance agreements providing~~
~~13 35 scheduled repair and maintenance services for leased vehicles.~~

14 1 5. 6. "Motor vehicle service contract provider" or
14 2 "provider" "Provider" means a person who issues, makes,
14 3 provides, sells, or offers to sell a motor vehicle service
14 4 contract.

14 5 6. "Motor vehicle service contract reimbursement insurance
14 6 policy" or "reimbursement insurance policy" means a policy of
14 7 insurance providing coverage for all obligations and
14 8 liabilities incurred by a motor vehicle service contract
14 9 provider under the terms of motor vehicle service contracts
14 10 issued by the provider.

14 11 7. "Record" means information stored or preserved in any
14 12 medium, including in an electronic or paper format. A record
14 13 includes but is not limited to documents, books, publications,
14 14 accounts, correspondence, memoranda, agreements, computer
14 15 files, film, microfilm, photographs, and audio or visual
14 16 tapes.

14 17 8. "Reimbursement insurance policy" means a policy of
14 18 insurance issued to a service company and pursuant to which
14 19 the insurer agrees, for the benefit of the service contract
14 20 holders, to discharge all of the obligations and liabilities
14 21 of the service company under the terms of service contracts
14 22 issued by the service company in the event of nonperformance
14 23 by the service company. For the purposes of this definition,
14 24 "all obligations and liabilities" include, but are not limited
14 25 to, failure of the service company to perform under the
14 26 service contract and the return of the unearned service
14 27 company fee in the event of the service company's
14 28 unwillingness or inability to reimburse the unearned service
14 29 company fee in the event of termination of a service contract.

14 30 9. "Service company" means a person who issues and is
14 31 obligated to perform, or arrange for the performance of,
14 32 services pursuant to a service contract.

14 33 10. "Service contract" means a contract or agreement given
14 34 for consideration over and above the lease or purchase price
14 35 of a new or used motor vehicle having a gross vehicle weight
15 1 rating of less than sixteen thousand pounds, that undertakes
15 2 to perform or provide repair or replacement service, or
15 3 indemnification for that service, for the operation or
15 4 structural failure of a motor vehicle due to a defect in
15 5 materials or skill of work or normal wear and tear, but does
15 6 not include mechanical breakdown insurance or maintenance
15 7 agreements.

15 8 8- 11. "Service contract holder" means a person who
15 9 purchases a motor vehicle service contract.

15 10 12. "Third-party administrator" means a person who
15 11 contracts with a service company to be responsible for the
15 12 administration of the service company's service contracts,
15 13 including processing and adjudicating claims pursuant to a
15 14 service contract.

15 15 Sec. 24. Section 516E.2, Code 2005, is amended to read as
15 16 follows:

15 17 516E.2 INSURANCE REQUIRED REQUIREMENTS FOR DOING BUSINESS.

15 18 1. A motor vehicle service contract shall not be issued,
15 19 sold, or offered for sale in this state unless the provider of
15 20 the service contract is insured under a motor vehicle service
15 21 contract reimbursement insurance policy issued by an insurer
15 22 authorized to do business in this state. service company does
15 23 all of the following:

15 24 a. Provides a receipt for the purchase of the service
15 25 contract to the service contract holder.

15 26 b. Provides a copy of the service contract to the service
15 27 contract holder within a reasonable period of time after the
15 28 date of purchase of the service contract.

15 29 2. The issuer of a reimbursement insurance policy shall
15 30 not cancel a reimbursement insurance policy unless a written
15 31 notice has been received by the commissioner and by each
15 32 applicable provider, including automobile dealers and third-
15 33 party administrators. The notice shall fix the date of
15 34 cancellation at a date no earlier than ten days after receipt
15 35 of the notice by the commissioner and by the applicable
16 1 provider. The notice may be made in person or by mail and a

~~16 2 post office department receipt of certified or registered~~
~~16 3 mailing shall be deemed proof of receipt of the notice. A~~
~~16 4 service company shall not issue a service contract or arrange~~
~~16 5 to perform services pursuant to a service contract unless the~~
~~16 6 service company is registered with the commissioner. A~~
~~16 7 service company shall file a registration with the~~
~~16 8 commissioner annually, on a form prescribed by the~~
~~16 9 commissioner, accompanied by a registration fee in the amount~~
~~16 10 of five hundred dollars.~~

~~16 11 3. In order to assure the faithful performance of a~~
~~16 12 service company's obligations to its service contract holders,~~
~~16 13 each service company shall do all of the following:~~

~~16 14 a. Insure all service contracts under a reimbursement~~
~~16 15 insurance policy issued by an insurer authorized to transact~~
~~16 16 insurance in this state.~~

~~16 17 b. Maintain a funded reserve account for the service~~
~~16 18 company's obligations under its service contracts issued and~~
~~16 19 outstanding in this state. The reserves shall not be less~~
~~16 20 than forty percent of gross consideration received, less~~
~~16 21 claims paid, on the sale of the service contracts for all in=~~
~~16 22 force service contracts. The reserve account shall be subject~~
~~16 23 to examination and review by the commissioner.~~

~~16 24 c. File a certificate of deposit issued by a financial~~
~~16 25 institution in the name of the commissioner, as trustee, with~~
~~16 26 terms and conditions approved by the commissioner as to~~
~~16 27 issuer, form, and contents, as a financial security deposit,~~
~~16 28 having a value of not less than five percent of the gross~~
~~16 29 consideration received by the service company in Iowa on the~~
~~16 30 sale of service contracts for all service contracts issued and~~
~~16 31 in force, but not less than the amount of twenty=five thousand~~
~~16 32 dollars.~~

~~16 33 4. The commissioner may issue an order denying,~~
~~16 34 suspending, or revoking any registration if the commissioner~~
~~16 35 finds that the order is in the public interest and finds any~~
~~17 1 of the following:~~

~~17 2 a. The registration is incomplete in any material respect~~
~~17 3 or contains any statement which, in light of the circumstances~~
~~17 4 under which the registration was made, is determined by the~~
~~17 5 commissioner to be false or misleading with respect to any~~
~~17 6 material fact.~~

~~17 7 b. A provision of this chapter or a rule, order, or~~
~~17 8 condition lawfully imposed under this chapter, has been~~
~~17 9 willfully violated in connection with the sale of service~~
~~17 10 contracts by any of the following persons:~~

~~17 11 (1) The person filing the registration, but only if the~~
~~17 12 person filing the registration is directly or indirectly~~
~~17 13 controlled by or acting for the service company.~~

~~17 14 (2) The service company, any partner, officer, or director~~
~~17 15 of the service company or any person occupying a similar~~
~~17 16 status or performing similar functions for the service~~
~~17 17 company, or any person directly or indirectly controlling or~~
~~17 18 controlled by the service company.~~

~~17 19 c. The service company has not filed a document or~~
~~17 20 information required under this chapter.~~

~~17 21 d. The service company's literature or advertising is~~
~~17 22 misleading, incorrect, incomplete, or deceptive.~~

~~17 23 e. The service company has failed to pay the proper filing~~
~~17 24 fee. However, the commissioner shall vacate an order issued~~
~~17 25 pursuant to this paragraph when the proper fee has been paid.~~

~~17 26 f. The service company does not have the minimum net~~
~~17 27 worth, as determined in accordance with generally accepted~~
~~17 28 accounting principles, required under this chapter.~~

~~17 29 The commissioner may vacate or modify an order issued under~~
~~17 30 this subsection if the commissioner finds that the conditions~~
~~17 31 which prompted the entry of the order have changed or that it~~
~~17 32 is otherwise in the public interest to do so.~~

~~17 33 Sec. 25. Section 516E.3, Code 2005, is amended to read as~~
~~17 34 follows:~~

~~17 35 516E.3 FILING AND FEE REQUIREMENTS.~~

~~18 1 1. SERVICE COMPANIES.~~

~~18 2 a. A motor vehicle service contract shall not be issued,~~
~~18 3 sold, or offered for sale in this state unless a true and~~
~~18 4 correct copy of the service contract, and the provider's~~
~~18 5 service company's reimbursement insurance policy have been~~
~~18 6 filed with the commissioner by the service company.~~

~~18 7 2- b. In addition to any other required filings, an~~
~~18 8 accurate copy of the service contract and the provider's~~
~~18 9 reimbursement insurance policy, the A service company shall~~
~~18 10 file a consent to service of process on the commissioner, and~~
~~18 11 such other information as the commissioner requires shall be~~
~~18 12 filed annually with the commissioner no later than the first~~

18 13 day of August. If the first day of August falls on a weekend
18 14 or a holiday, the date for filing shall be the next business
18 15 day. In addition to the annual filing, the ~~provider service~~
18 16 ~~company~~ shall promptly file copies of any amended documents if
18 17 material amendments have been made in the materials on file
18 18 with the commissioner. If an annual filing is made after the
18 19 first of August and sales have occurred during the period when
18 20 the ~~provider service company~~ was in noncompliance with this
18 21 section, the commissioner shall assess an additional filing
18 22 fee that is two times the amount normally required for an
18 23 annual filing. A fee shall not be charged for interim filings
18 24 made to keep the materials filed with the division current and
18 25 accurate. The annual filing shall be accompanied by a filing
18 26 fee determined by the commissioner which shall be sufficient
18 27 to defray the costs of administering this chapter.

18 28 ~~3. a. c. A motor vehicle service contract provider~~
18 29 ~~service company~~ shall promptly file the following information
18 30 with the ~~insurance~~ commissioner:

18 31 (1) A change in the name or ownership of the ~~provider~~
18 32 ~~service company~~.

18 33 (2) The termination of the ~~provider's service company's~~
18 34 business.

18 35 ~~b. (3) The provider service company~~ is not required to
1 submit a fee as part of this filing.

19 2 2. PROVIDERS.

19 3 a. A service contract shall not be sold or offered for
19 4 sale in this state unless a true and correct copy of the
19 5 service contract has been filed with the commissioner by the
19 6 provider.

19 7 b. A provider shall file a consent to service of process
19 8 on the commissioner and such other information as the
19 9 commissioner requires annually with the commissioner no later
19 10 than August 1. If August 1 falls on a weekend or a holiday,
19 11 the date for filing shall be the next business day. In
19 12 addition to the annual filing, the provider shall promptly
19 13 file copies of any amended documents if material amendments
19 14 have been made in the materials on file with the commissioner.
19 15 If an annual filing is made after August 1 and sales have
19 16 occurred during the period when the provider was in
19 17 noncompliance with this section, the commissioner shall assess
19 18 an additional filing fee that is two times the amount normally
19 19 required for an annual filing. A fee shall not be charged for
19 20 interim filings made to keep the materials filed with the
19 21 division current and accurate. The annual filing shall be
19 22 accompanied by a filing fee in the amount of one hundred
19 23 dollars.

19 24 c. A provider shall promptly file the following
19 25 information with the commissioner:

19 26 (1) A change in the name or ownership of the provider.

19 27 (2) The termination of the provider's business.

19 28 (3) A provider is not required to submit a fee as part of
19 29 this filing.

19 30 Sec. 26. Section 516E.4, Code 2005, is amended by striking
19 31 the section and inserting in lieu thereof the following:

19 32 516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

19 33 1. REQUIRED DISCLOSURES. A reimbursement insurance policy
19 34 insuring a service contract issued, sold, or offered for sale
19 35 in this state shall conspicuously state that, upon failure of
20 1 the service company to perform under the contract, including
20 2 but not limited to a failure to return the unearned
20 3 consideration paid for a service contract in excess of the
20 4 premium, the insurer that issued the policy shall pay on
20 5 behalf of the service company any amount that is owed to the
20 6 service contract holder by the service company to satisfy the
20 7 service company's obligations under a service contract issued
20 8 or sold by the service company.

20 9 2. TERMINATION. As applicable, an insurer that issued a
20 10 reimbursement insurance policy shall not terminate the policy
20 11 unless a written notice has been received by the commissioner
20 12 and by each applicable provider, service company, or third=
20 13 party administrator. The notice shall fix the date of
20 14 termination at a date no earlier than ten days after receipt
20 15 of the notice by the commissioner and by the applicable
20 16 provider, service company, or third-party administrator. The
20 17 notice may be delivered in person or sent by mail, and a
20 18 restricted certified mail return receipt shall be deemed proof
20 19 of receipt of notice. The termination of a reimbursement
20 20 insurance policy shall not reduce the issuer's responsibility
20 21 for a service contract issued by a service company prior to
20 22 the date of termination.

20 23 3. INDEMNIFICATION OR SUBROGATION. This section does not

20 24 prevent or limit the right of an insurer that issued a
20 25 reimbursement insurance policy to seek indemnification from or
20 26 subrogation against a service company if the insurer pays or
20 27 is obligated to pay a service contract holder sums that the
20 28 service company was obligated to pay pursuant to the
20 29 provisions of a service contract or pursuant to a contractual
20 30 agreement.

20 31 Sec. 27. Section 516E.5, Code 2005, is amended to read as
20 32 follows:

20 33 516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS == CONTRACT
20 34 PROVISIONS.

20 35 1. A ~~motor vehicle~~ service contract shall not be issued,
21 1 sold, or offered for sale in this state unless the contract
21 2 conspicuously states that the obligations of the ~~provider~~
21 3 service company to the service contract holder are guaranteed
21 4 under the service contract a reimbursement insurance policy,
21 5 and unless the including a statement in substantially the
21 6 following form: "Obligations of the service company under
21 7 this service contract are guaranteed under a reimbursement
21 8 insurance policy. If the service company fails to pay or
21 9 provide service on a claim within sixty days after proof of
21 10 loss has been filed with the service company, the service
21 11 contract holder is entitled to make a claim directly against
21 12 the reimbursement insurance policy." A claim against a
21 13 reimbursement insurance policy shall also include a claim for
21 14 return of the unearned consideration paid for the service
21 15 contract in excess of the premium paid. A service contract
21 16 shall conspicuously states state the name and address of the
21 17 issuer of the reimbursement insurance policy for that service
21 18 contract.

21 19 2. A ~~motor vehicle~~ service contract shall be written in
21 20 clear, understandable language and the entire contract shall
21 21 be printed or typed in easy-to-read type, size, and style, and
21 22 shall not be issued, sold, or offered for sale in this state
21 23 unless the contract does all of the following:

21 24 a. Clearly and conspicuously states the name and address
21 25 of the service company, describes the service company's
21 26 obligations to perform services or to arrange for the
21 27 performance of services under the service contract, and states
21 28 that the obligations of the provider service company to the
21 29 service contract holder are guaranteed under a service
21 30 contract reimbursement insurance policy.

21 31 b. Clearly and conspicuously states the name and address
21 32 of the issuer of the reimbursement insurance policy.

21 33 c. Identifies the ~~motor vehicle~~ service contract provider,
21 34 the seller of the motor vehicle company obligated to perform
21 35 the service under the service contract, any third-party
22 1 administrator, and the service contract holder to the extent
22 2 that the name and address of the service contract holder has
22 3 been furnished by the service contract holder.

22 4 d. Sets forth the total purchase price of the service
22 5 contract and the terms under which the purchase price of the
22 6 service contract is to be paid.

22 7 e. Sets forth the procedure for making a claim, including
22 8 a telephone number.

22 9 f. Clearly and conspicuously states the dates that
22 10 coverage starts and ends and the existence, terms, and
22 11 conditions of a deductible amount, if any.

22 12 g. Specifies the merchandise or services, or both, to be
22 13 provided and clearly states any and all limitations,
22 14 exceptions, or exclusions.

22 15 h. Sets forth the conditions on which substitution of
22 16 services will be allowed.

22 17 i. Sets forth all of the obligations and duties of the
22 18 service contract holder, including but not limited to the duty
22 19 to protect against any further damage to the motor vehicle,
22 20 and the obligation to notify the ~~provider~~ service company in
22 21 advance of any repair, if any.

22 22 j. Sets forth any and all terms, restrictions, or
22 23 conditions governing transferability of the service contract,
22 24 if any.

22 25 k. Describes or references any and all applicable
22 26 provisions of the Iowa consumer credit code, chapter 537.

22 27 l. States the name and address of the commissioner.

22 28 m. Sets forth any and all conditions on which the service
22 29 contract may be canceled, the terms and conditions for the
22 30 refund of any portion of the purchase price, the identity of
22 31 the person primarily liable to provide any refund, and the
22 32 identity of any other person liable to provide any portion of
22 33 the refund. If the service contract holder cancels the
22 34 service contract, the service company shall mail a written

22 35 notice of termination to the service contract holder within
23 1 fifteen days of the date of the termination.
23 2 n. Permits the service contract holder to cancel and
23 3 return the service contract within at least twenty days of the
23 4 date of mailing the service contract to the service contract
23 5 holder or within at least ten days after delivery of the
23 6 service contract if the service contract is delivered at the
23 7 time of sale of the service contract, or within a longer
23 8 period of time as permitted under the service contract. If no
23 9 claim has been made under the service contract prior to its
23 10 return, the service contract is void and the full purchase
23 11 price of the service contract shall be refunded to the service
23 12 contract holder. A ten percent penalty shall be added each
23 13 month to a refund that is not paid to a service contract
23 14 holder within thirty days of the return of the service
23 15 contract to the service company. The applicable time period
23 16 for cancellation of a service contract shall apply only to the
23 17 original service contract holder that purchased the service
23 18 contract.

23 19 3. A complete copy of the terms of the ~~motor vehicle~~
23 20 service contract shall be delivered to the prospective service
23 21 contract holder at or before the time that the prospective
23 22 service contract holder makes application for the service
23 23 contract. If there is no separate application procedure, then
23 24 a complete copy of the ~~motor vehicle~~ service contract shall be
23 25 delivered to the service contract holder at or before the time
23 26 the service contract holder becomes bound under the contract.
23 27 Sec. 28. Section 516E.6, Code 2005, is amended to read as
23 28 follows:

23 29 516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES ==
23 30 INJUNCTION.

23 31 The commissioner shall issue an order instructing ~~the a~~
23 32 ~~provider, service company, or third-party administrator~~ to
23 33 cease and desist from selling or offering for sale ~~motor~~
23 34 ~~vehicle~~ service contracts if the commissioner determines that
23 35 the provider, ~~service company, or third-party administrator~~
24 1 has failed to comply with a provision of this chapter. Upon
24 2 the failure of a ~~motor vehicle provider, service contract~~
24 3 ~~provider company, or third-party administrator~~ to obey a cease
24 4 and desist order issued by the commissioner, the commissioner
24 5 may give notice in writing of the failure to the attorney
24 6 general, who shall immediately commence an action against the
24 7 provider, ~~service company, or third-party administrator~~ to
24 8 enjoin the provider, ~~service company, or third-party~~
24 9 ~~administrator~~ from selling or offering for sale ~~motor vehicle~~
24 10 service contracts until the provider, ~~service company, or~~
24 11 ~~third-party administrator~~ complies with the provisions of this
24 12 chapter and the district court may issue the injunction.

24 13 Sec. 29. Section 516E.7, Code 2005, is amended to read as
24 14 follows:

24 15 516E.7 RULES.

24 16 The commissioner may adopt rules as provided in chapter 17A
24 17 to administer and enforce the provisions of this chapter and
24 18 to establish minimum standards for disclosure of ~~motor vehicle~~
24 19 service contract coverage limitations and exclusions.

24 20 Sec. 30. Section 516E.8, Code 2005, is amended to read as
24 21 follows:

24 22 516E.8 EXEMPTION.

24 23 This chapter does not apply to a ~~motor vehicle~~ service
24 24 contract issued by the manufacturer or importer of the motor
24 25 vehicle covered by the service contract or to any third party
24 26 acting in an administrative capacity on the manufacturer's
24 27 behalf in connection with that service contract.

24 28 Sec. 31. Section 516E.9, Code 2005, is amended to read as
24 29 follows:

24 30 516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

24 31 A ~~motor vehicle~~ service contract ~~provider company~~ shall not
24 32 represent or imply in any manner that the ~~provider service~~
24 33 ~~company~~ has been sponsored, recommended, or approved or that
24 34 the ~~provider's~~ ~~service company's~~ abilities or qualifications
24 35 have in any respect been passed upon by the state of Iowa,
25 1 including the commissioner, the insurance division, or the
25 2 division's securities bureau.

25 3 Sec. 32. Section 516E.10, Code 2005, is amended to read as
25 4 follows:

25 5 516E.10 PROHIBITED ACTS == UNFAIR OR DECEPTIVE TRADE
25 6 PRACTICES.

25 7 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR
25 8 PRACTICES.

25 9 a. Unless licensed as an insurance company, a ~~motor~~
25 10 ~~vehicle~~ service contract ~~provider company~~ shall not use in its

25 11 name, contracts, or literature, the words "insurance",
25 12 "casualty", "surety", "mutual", or any other words descriptive
25 13 of the insurance, casualty, or surety business or deceptively
25 14 similar to the name or description of any insurance or surety
25 15 corporation, or any other ~~motor vehicle service contract~~
~~25 16 provider company.~~
25 17 b. A ~~motor vehicle service contract provider company~~ shall
25 18 not, without the written consent of the purchaser, knowingly
25 19 charge a purchaser for duplication of coverage or duties
25 20 required by state or federal law, a warranty expressly issued
25 21 by a manufacturer or seller of a product, or an implied
25 22 warranty enforceable against the lessor, seller, or
25 23 manufacturer of a product.
25 24 c. A ~~motor vehicle provider, service contract provider~~
25 25 ~~company, or third-party administrator~~ shall not make, permit,
25 26 or cause a false or misleading statement, either oral or
25 27 written, in connection with the sale, offer to sell, or
25 28 advertisement of a ~~motor vehicle service contract~~.
25 29 d. A ~~motor vehicle provider, service contract provider~~
25 30 ~~company, or third-party administrator~~ shall not permit or
25 31 cause the omission of a material statement in connection with
25 32 the sale, offer to sell, or advertisement of a ~~motor vehicle~~
25 33 ~~service contract~~, which under the circumstances should have
25 34 been made in order to make the statement not misleading.
25 35 e. A ~~motor vehicle provider, service contract provider~~
26 1 ~~company, or third-party administrator~~ shall not make, permit,
26 2 or cause to be made a false or misleading statement, either
26 3 oral or written, about the benefits or services available
26 4 under the ~~motor vehicle service contract~~.
26 5 f. A ~~motor vehicle provider, service contract provider~~
26 6 ~~company, or third-party administrator~~ shall not make, permit,
26 7 or cause to be made a statement of practice which has the
26 8 effect of creating or maintaining a fraud.
26 9 g. A ~~motor vehicle provider, service contract provider~~
26 10 ~~company, or third-party administrator~~ shall not make, publish,
26 11 disseminate, circulate, or place before the public, or cause,
26 12 directly or indirectly, to be made, published, disseminated,
26 13 circulated, or placed before the public in a newspaper,
26 14 magazine, or other publication, or in the form of a notice,
26 15 circular, pamphlet, letter, or poster, or over a radio or
26 16 television station, or in any other way, an advertisement,
26 17 announcement, or statement containing an assertion,
26 18 representation, or statement with respect to the ~~motor vehicle~~
26 19 ~~service contract industry or with respect to a motor vehicle~~
26 20 ~~provider, service contract provider company, or third-party~~
~~26 21 administrator~~ which is untrue, deceptive, or misleading. It
26 22 is deceptive or misleading to use any combination of words,
26 23 symbols, or physical materials which by their content,
26 24 phraseology, shape, color, or other characteristics are so
26 25 similar to a combination of words, symbols, or physical
26 26 materials used by a manufacturer or of such a nature that the
26 27 use would tend to mislead a person into believing that the
26 28 solicitation is in some manner connected with the
26 29 manufacturer, unless actually authorized or issued by the
26 30 manufacturer.
26 31 h. A bank, savings and loan association, credit union,
26 32 insurance company, or other lending institution shall not
26 33 require the purchase of a ~~motor vehicle service contract~~ as a
26 34 condition of a loan.
26 35 2. DEFAMATION. A ~~motor vehicle provider, service contract~~
~~27 1 provider company, or third-party administrator~~ shall not make,
27 2 publish, disseminate, or circulate, directly or indirectly, or
27 3 aid, abet, or encourage the making, publishing, disseminating,
27 4 or circulating of an oral or written statement or a pamphlet,
27 5 circular, article, or literature which is false or maliciously
27 6 critical of or derogatory to the financial condition of a
27 7 person, and which is calculated to injure the person.
27 8 3. BOYCOTT, COERCION, AND INTIMIDATION. A ~~motor vehicle~~
27 9 ~~provider, service contract provider~~ shall not enter into an
27 10 ~~company, or third-party administrator~~ agreement to commit, or
27 11 by a concerted action commit, an act of boycott, coercion, or
27 12 intimidation resulting in or tending to result in unreasonable
27 13 restraint of, or monopoly in, the service contract industry.
27 14 4. FALSE STATEMENTS. A ~~motor vehicle provider, service~~
27 15 ~~contract provider company, or third-party administrator~~ shall
27 16 not knowingly file with a supervisory or other public
27 17 official, or knowingly make, publish, disseminate, circulate,
27 18 or deliver to a person, or place before the public, or
27 19 knowingly cause directly or indirectly to be made, published,
27 20 disseminated, circulated, delivered to a person, or placed
27 21 before the public, a false material statement of fact as to

27 22 the financial condition of a person.

27 23 5. ~~FALSE ENTRIES. A motor vehicle provider, service~~
27 24 ~~contract provider company, or third-party administrator~~ shall
27 25 not knowingly make a false entry of a material fact in a book,
27 26 report, or statement of a person or knowingly fail to make a
27 27 true entry of a material fact pertaining to the business of
27 28 the person in a book, report, or statement of the person.

27 29 6. ~~USED OR REBUILT PARTS. A motor vehicle service~~
27 30 ~~contract provider company~~ shall not repair a motor vehicle
27 31 covered by a ~~motor vehicle~~ service contract with any of the
27 32 following:

27 33 a. Used parts, unless the ~~provider service company~~
27 34 receives prior written authorization by the vehicle owner.

27 35 b. Rebuilt parts, unless the parts are rebuilt according
28 1 to national standards recognized by the insurance division.

28 2 7. MARKETING. A provider, service company, or third-party
28 3 administrator shall not market, advertise, offer to sell, or
28 4 sell a service contract by using personal information obtained
28 5 in violation of the federal Driver's Privacy Protection Act,
28 6 18 U.S.C. } 2721 et seq.

28 7 ~~7.~~ 8. VIOLATIONS OF SECTION 714.16.

28 8 a. A violation of this chapter or rules adopted by the
28 9 commissioner pursuant to this chapter is an unfair practice as
28 10 defined in section 714.16.

28 11 b. An enforcement agreement between the commissioner and a
28 12 ~~motor vehicle provider, service contract provider company, or~~
28 13 ~~third-party administrator~~ does not bar the attorney general
28 14 from bringing an action against the provider, ~~service company,~~
28 15 ~~or third-party administrator~~ under section 714.16 as to
28 16 allegations that a violation of this chapter constitutes a
28 17 violation of section 714.16.

28 18 Sec. 33. Section 516E.11, Code 2005, is amended to read as
28 19 follows:

28 20 516E.11 RECORDS == EXPLANATION OF REASONS FOR DENIAL OF
28 21 CLAIMS.

28 22 1. A ~~motor vehicle provider, service contract provider~~
28 23 ~~company, or third-party administrator~~ shall keep accurate
28 24 records concerning transactions regulated under this chapter.

28 25 a. ~~A motor vehicle service contract provider's records~~
28 26 ~~Records of a provider, service company, or third-party~~
28 27 ~~administrator~~ shall include all of the following:

28 28 (1) Copies of ~~all service contracts~~ each type of service
28 29 contract issued or sold.

28 30 (2) The name and address of each service contract holder.

28 31 (3) ~~The Claim files which shall contain, at a minimum, the~~
28 32 dates, amounts, and descriptions of all receipts, claims, and
28 33 expenditures related to service contracts.

28 34 (4) Copies of all materials relating to claims which have
28 35 been denied.

29 1 b. A ~~motor vehicle provider, service contract provider~~
29 2 ~~company, or third-party administrator~~ shall retain all
29 3 required records pertaining to a service contract holder for
29 4 at least two years after the specified period of coverage has
29 5 expired. A ~~provider, service company, or third-party~~
29 6 ~~administrator~~ discontinuing business in this state shall

29 7 maintain its records until the provider, ~~service company, or~~
29 8 ~~third-party administrator~~ furnishes the commissioner

29 9 satisfactory proof that the provider, ~~service company, or~~
29 10 ~~third-party administrator~~ has discharged all obligations to
29 11 contract holders in this state.

29 12 c. ~~Motor vehicle service contract providers~~ Providers,
29 13 service companies, or third-party administrators shall make
29 14 all records concerning transactions regulated under the
29 15 chapter available to the commissioner for the purpose of
29 16 examination.

29 17 d. A provider, service company, or third-party
29 18 administrator may keep all records required under this chapter
29 19 in an electronic form. If an administrator maintains records
29 20 in a form other than a printed copy, the records shall be
29 21 accessible from a computer terminal available to the
29 22 commissioner and shall be capable of duplication to a legible
29 23 printed copy.

29 24 2. A ~~motor vehicle service contract provider, service~~
29 25 ~~company, or third-party administrator~~ shall promptly deliver a
29 26 written explanation to the service contract holder, describing
29 27 the reasons for denying a claim or for the offer of a
29 28 compromise settlement, based on all relevant facts or legal
29 29 requirements and referring to applicable provisions of the
29 30 service contract.

29 31 3. A provider, service company, or third-party
29 32 administrator shall keep accurate records concerning

29 33 transactions regulated under this chapter, including a list of
29 34 the locations where service contracts are marketed, sold,
29 35 offered for sale, or performed.

30 1 Sec. 34. Section 516E.12, Code 2005, is amended to read as
30 2 follows:

30 3 516E.12 SERVICE OF PROCESS.

30 4 The commissioner shall be the agent for service of process
30 5 upon a ~~motor vehicle provider, service contract provider~~
30 6 company, or third-party administrator and an issuer of a
30 7 reimbursement insurance policy.

30 8 Sec. 35. Section 516E.13, subsection 4, unnumbered
30 9 paragraph 1, Code 2005, is amended to read as follows:

30 10 Upon the commissioner's determination that a provider,
30 11 service company, or third-party administrator has engaged, is
30 12 engaging, or is about to engage in any act or practice
30 13 constituting a violation of this chapter or a rule adopted
30 14 pursuant to this chapter, the commissioner may issue a summary
30 15 order directing the person to cease and desist from engaging
30 16 in the act or practice resulting in the violation or to take
30 17 other affirmative action as in the judgment of the
30 18 commissioner is necessary to comply with the requirements of
30 19 this chapter.

30 20 Sec. 36. Section 516E.14, Code 2005, is amended to read as
30 21 follows:

30 22 516E.14 AUDITS.

30 23 The commissioner may examine or cause to be examined the
30 24 records of a ~~motor vehicle provider, service contract provider~~
30 25 company, or third-party administrator for the purpose of
30 26 verifying compliance with this chapter. The commissioner may
30 27 require, by a subpoena, the attendance of the provider,
30 28 service company, or third-party administrator, or the

~~30 29 provider's~~ a representative thereof, and any other witness
30 30 whom the commissioner deems necessary or expedient, and the
30 31 production of records relating in any manner to compliance
30 32 with this chapter if a provider, service company, third-party
30 33 administrator, or witness fails or refuses to produce the
30 34 documents for examination when requested by the commissioner.

30 35 Sec. 37. Section 516E.15, subsection 1, paragraph b, Code
31 1 2005, is amended to read as follows:

31 2 b. A ~~motor vehicle provider, service contract provider who~~
31 3 company, or third-party administrator that fails to file
31 4 documents and information with the commissioner as required
31 5 pursuant to section 516E.3 may be subject to a civil penalty.
31 6 The amount of the civil penalty shall not be more than four
31 7 hundred dollars plus two dollars for each ~~motor vehicle~~
31 8 service contract that the person executed prior to satisfying
31 9 the filing requirement. However, a person who fails to file
31 10 information regarding a change in the ~~provider's~~
31 11 termination of the ~~provider's~~ business of a provider, service
31 12 company, or third-party administrator as required pursuant to
31 13 section 516E.3 is subject to a civil penalty of not more than
31 14 five hundred dollars.

31 15 Sec. 38. Section 516E.15, subsection 2, Code 2005, is
31 16 amended to read as follows:

31 17 2. If the commissioner believes that grounds exist for the
31 18 criminal prosecution of a ~~motor vehicle provider, service~~
31 19 ~~contract provider~~ company, or third-party administrator for
31 20 violating this chapter or any other law of this state, the
31 21 commissioner may forward to the attorney general or the county
31 22 attorney the grounds for the belief, including all evidence in
31 23 the commissioner's possession for action deemed appropriate by
31 24 the attorney general or county attorney. At the request of
31 25 the attorney general, the county attorney shall appear and
31 26 prosecute the action when brought in the county served by the
31 27 county attorney.

31 28 Sec. 39. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE
31 29 TO COOPERATE.

31 30 1. If a person fails or refuses to file a statement or
31 31 report or to produce any books, accounts, papers,
31 32 correspondence, memoranda, purchase agreements, files, or
31 33 other documents or records, or to obey a subpoena issued by
31 34 the commissioner, the commissioner may refer the matter to the
31 35 attorney general, who may apply to a district court to enforce
32 1 compliance. The court may order any of the following:

32 2 a. Injunctive relief restricting or prohibiting the offer
32 3 or sale of service contracts.

32 4 b. Production of documents or records including but not
32 5 limited to books, accounts, papers, correspondence, memoranda,
32 6 purchase agreements, files, or other documents or records.

32 7 c. Such other relief as may be appropriate.

32 8 2. A court order issued pursuant to subsection 1 is

32 9 effective until the person who is subject to the order files
32 10 the statement or report, produces the documents requested, or
32 11 obeys the subpoena.

32 12 Sec. 40. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.

32 13 A service company that has issued or renewed in the
32 14 aggregate one thousand or fewer service contracts during the
32 15 preceding calendar year shall maintain a minimum net worth of
32 16 forty thousand dollars. The minimum net worth to be
32 17 maintained shall be increased by an additional twenty thousand
32 18 dollars for each additional five hundred contracts or fraction
32 19 thereof issued or renewed, up to a maximum required net worth
32 20 of four hundred thousand dollars. At least twenty thousand
32 21 dollars of net worth shall consist of paid-in capital.

32 22 Sec. 41. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.

32 23 1. The administrator shall keep a register of all filings
32 24 and orders which have been entered. The register shall be
32 25 open for public inspection.

32 26 2. Upon request and for a reasonable fee, the
32 27 administrator shall furnish to any person copies of any
32 28 register entry or any document which is a matter of public
32 29 record and not confidential. Copies shall be available during
32 30 normal business hours and may be certified upon request. In
32 31 any administrative, civil, or criminal proceeding, a certified
32 32 copy is prima facie evidence of the contents of the document
32 33 certified.

32 34 3. Pursuant to chapter 22, the administrator may maintain
32 35 the confidentiality of information obtained during an
33 1 investigation or audit.

33 2 Sec. 42. NEW SECTION. 516E.19 ADMINISTRATION.

33 3 1. This chapter shall be administered by the commissioner.
33 4 The deputy administrator appointed pursuant to section 502.601
33 5 shall be the principal operations officer responsible to the
33 6 commissioner for the routine administration of this chapter
33 7 and management of the administrative staff. In the absence of
33 8 the commissioner, whether because of vacancy in the office, by
33 9 reason of absence, physical disability, or other cause, the
33 10 deputy administrator shall be the acting administrator and
33 11 shall, for the time being, have and exercise the authority
33 12 conferred upon the commissioner. The commissioner may from
33 13 time to time delegate to the deputy administrator any or all
33 14 of the functions assigned to the commissioner in this chapter.
33 15 The deputy administrator shall employ officers, attorneys,
33 16 accountants, auditors, investigators, and other employees as
33 17 shall be needed for the administration of this chapter.

33 18 2. Upon request, the commissioner may honor requests from
33 19 interested persons for interpretive opinions.

33 20 Sec. 43. Section 518.14, subsection 4, paragraph a, Code
33 21 2005, is amended to read as follows:

33 22 a. UNITED STATES GOVERNMENT OBLIGATIONS. ~~Obligations~~
33 23 ~~Bonds or other evidences of indebtedness issued, assumed, or~~
33 24 ~~guaranteed by the United States of America, or by any~~
33 25 ~~agency or instrumentality of the United States of America,~~
33 26 ~~include investments in an open-end management investment~~
33 27 ~~company registered with the federal securities and exchange~~
33 28 ~~commission under the federal Investment Company Act of 1940,~~
33 29 ~~15 U.S.C. } 80(a) and operated in accordance with 17 C.F.R. }~~
33 30 ~~270.2a-7, the portfolio of which is limited to the United~~
33 31 ~~States obligations described in this paragraph, and which are~~
33 32 ~~included in the national association of insurance~~
33 33 ~~commissioners' securities valuation office's United States~~
33 34 ~~direct obligation = full faith and credit list.~~

33 35 Sec. 44. Section 518A.12, subsection 4, paragraph a, Code
34 1 2005, is amended to read as follows:

34 2 a. UNITED STATES GOVERNMENT OBLIGATIONS. ~~Obligations~~
34 3 ~~Bonds or other evidences of indebtedness issued, assumed, or~~
34 4 ~~guaranteed by the United States of America, or by any~~
34 5 ~~agency or instrumentality of the United States of America,~~
34 6 ~~include investments in an open-end management investment~~
34 7 ~~company registered with the federal securities and exchange~~
34 8 ~~commission under the federal Investment Company Act of 1940,~~
34 9 ~~15 U.S.C. } 80(a) and operated in accordance with 17 C.F.R. }~~
34 10 ~~270.2a-7, the portfolio of which is limited to the United~~
34 11 ~~States obligations described in this paragraph, and which are~~
34 12 ~~included in the national association of insurance~~
34 13 ~~commissioners' securities valuation office's United States~~
34 14 ~~direct obligation = full faith and credit list.~~

34 15 Sec. 45. Section 520.19, Code 2005, is amended to read as
34 16 follows:

34 17 520.19 ANNUAL TAX == FEES.

34 18 In lieu of all other taxes, licenses, charges, and fees
34 19 whatsoever, such attorney shall annually pay to the

34 20 commissioner the same fees as are paid by mutual companies
34 21 transacting the same kind of business, and an annual tax of
~~34 22 two percent, if a domestic reciprocal organization, and two~~
~~34 23 percent, if a foreign reciprocal organization, based upon the~~
~~34 24 applicable percentage stated in section 432.1, subsection 4,~~
34 25 calculated upon the gross premiums or deposits collected from
34 26 subscribers in this state during the preceding calendar year,
34 27 after deducting therefrom returns, or cancellations, and all
34 28 amounts returned to subscribers or credited to their accounts
34 29 as savings, and the amount returned upon canceled policies and
34 30 rejected applications covering property situated or on
34 31 business done within this state.

34 32 Sec. 46. Section 522B.17, Code 2005, is amended to read as
34 33 follows:

34 34 522B.17 PENALTY.

34 35 An insurer or insurance producer who, after hearing, is
35 1 found to have violated this chapter may be ordered to cease
35 2 and desist from engaging in the conduct resulting in the
35 3 violation and may be assessed a civil penalty pursuant to
35 4 chapter 507B.

35 5 A person ~~found who~~, after hearing, is found to have ~~acted~~
35 6 violated this chapter by acting as an agent of an insurer or
35 7 otherwise selling, soliciting, or negotiating insurance in
35 8 this state, or offering to the public advice, counsel, or
35 9 services with regard to insurance, who is not properly
35 10 licensed ~~is subject to~~ may be ordered to cease and desist from
35 11 engaging in the conduct resulting in the violation and may be
35 12 assessed a civil penalty according to the provisions of
35 13 chapter 507A.

35 14 If a person does not comply with an order issued pursuant
35 15 to this section, the commissioner may petition a court of
35 16 competent jurisdiction to enforce the order. The court shall
35 17 not require the commissioner to post a bond in an action or
35 18 proceeding under this section. If the court finds, after
35 19 notice and opportunity for hearing, that the person is not in
35 20 compliance with an order, the court may adjudge the person to
35 21 be in civil contempt of the order. The court may impose a
35 22 civil penalty against the person for contempt in an amount not
35 23 less than three thousand dollars but not greater than ten
35 24 thousand dollars for each violation and may grant any other
35 25 relief that the court determines is just and proper in the
35 26 circumstances.

35 27 Sec. 47. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

35 28 An association with at least twenty-five insurance producer
35 29 members may bring an action in district court to enjoin a
35 30 person from selling, soliciting, or negotiating insurance in
35 31 violation of section 522B.2. If the court finds that the
35 32 person is in violation of section 522B.2 and enjoins the
35 33 person from selling, soliciting, or negotiating insurance in
35 34 violation of that section, the court's findings of fact and
35 35 law, and the judgment and decree, when final, shall be
36 1 admissible in any proceeding initiated pursuant to section
36 2 522B.17 by the commissioner against the person enjoined and
36 3 the person enjoined shall be precluded from contesting in that
36 4 proceeding the court's determination that the person sold,
36 5 solicited, or negotiated insurance in violation of section
36 6 522B.2.

36 7 Sec. 48. Section 523A.402, subsection 6, paragraph c, Code
36 8 2005, is amended to read as follows:

36 9 c. The annuity shall not be contestable, or limit death
36 10 benefits in the case of suicide, with respect to that portion
36 11 of the face amount of the annuity which is required by
36 12 paragraph "b". The annuity shall not refer to physical
36 13 examination, or otherwise operate as an exclusion, limitation,
36 14 or condition other than requiring submission of proof of death
36 15 or surrender of the annuity at the time the prepaid purchase
36 16 agreement is funded, matures, or is canceled, as the case may
36 17 be.

36 18 Sec. 49. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

36 19 This section and the sections of this Act amending sections
36 20 513C.6 and 514E.2, and amending section 514E.7, subsection 1,
36 21 by enacting paragraph "e", being deemed of immediate
36 22 importance, take effect upon enactment. The section of the
36 23 Act amending section 513C.6 is retroactively applicable to
36 24 January 1, 2005, and is applicable on and after that date.
36 25 The sections of the Act amending section 514E.2 are
36 26 retroactively applicable to July 1, 1986, and are applicable
36 27 on and after that date. The portion of the section of the Act
36 28 amending section 514E.7, subsection 1, by enacting paragraph
36 29 "e" is retroactively applicable to January 1, 2005, and is
36 30 applicable on and after that date.

EXPLANATION

36 31
36 32 This bill relates to various provisions administered by the
36 33 insurance division of the department of commerce.
36 34 Code section 432.1 provides for cash refunds of excess
36 35 prepayments of premium tax to an insurance carrier when a
37 1 premium tax credit will not allow recoupment of the funds
37 2 paid.
37 3 Code section 505A.1 is amended to provide that the
37 4 commissioner of insurance shall be the state's representative
37 5 for the interstate insurance product regulation compact.
37 6 Code section 507C.2 is amended to include additional
37 7 definitions, including definitions of certain derivative
37 8 contracts that may be involved in insurer insolvency
37 9 proceedings.
37 10 New Code section 507C.28A is amended concerning rights that
37 11 may be exercised under netting agreements or qualified
37 12 financial contracts under certain circumstances.
37 13 Code section 507C.30 is amended by adding a new
37 14 subparagraph concerning the disallowance of certain setoffs
37 15 during insolvency proceedings.
37 16 Code section 513B.12 is amended to exempt small employer
37 17 carriers from electing risk=assuming status while the small
37 18 employer carrier reinsurance program is suspended.
37 19 Code section 513B.13 is amended to permit reduction of the
37 20 size of the small employer carrier reinsurance program board
37 21 while the program is suspended, with the approval of the
37 22 commissioner of insurance.
37 23 Code section 513B.17 strikes language allowing expansion of
37 24 the small employer carrier reinsurance program to employer
37 25 groups employing 25 to 50 employees if the market is
37 26 constricted and not competitive, since state law already
37 27 includes employee groups of that size in the program.
37 28 Code section 513C.6 is amended to allow an individual who
37 29 has coverage as a dependent under a basic or standard health
37 30 benefit plan to elect to continue coverage under the plan when
37 31 the individual is no longer covered as a dependent under the
37 32 plan. The bill provides that this provision is effective upon
37 33 enactment and is retroactively applicable to January 1, 2005,
37 34 and applies on and after that date.
37 35 Code section 514B.13 is amended to allow a health
38 1 maintenance organization that provides services exclusively on
38 2 a group contract basis to limit the applicability of the open
38 3 enrollment period provided for in the section to members of
38 4 the group covered by the contract, including those members of
38 5 the group who previously waived coverage.
38 6 Code section 514E.2, subsection 1, is amended to provide
38 7 that all carriers and all organized delivery systems licensed
38 8 by the director of public health providing health insurance or
38 9 health care services on an individual or group basis are
38 10 members of the Iowa comprehensive health insurance
38 11 association.
38 12 Code section 514E.2, subsection 5, is amended to strike a
38 13 requirement that the Iowa comprehensive health insurance
38 14 association include a list of health conditions which would
38 15 make an applicant eligible without demonstrating a rejection
38 16 of coverage by one carrier.
38 17 Code section 514E.2, subsection 7, is amended to include
38 18 definitions of "total health insurance premiums" and "payments
38 19 for subscriber contracts" for the purpose of computing
38 20 assessments of members by the Iowa comprehensive health
38 21 insurance association.
38 22 The bill provides that all the amendments to Code section
38 23 514E.2 take effect upon enactment and are retroactively
38 24 applicable to July 1, 1986, and apply on and after that date.
38 25 Code section 514E.7 is amended to provide that an
38 26 individual is eligible for coverage under the Iowa
38 27 comprehensive health insurance association if the person has
38 28 certain health conditions established by the association's
38 29 board of directors with the approval of the commission. Code
38 30 section 514E.7 is also amended to provide eligibility for such
38 31 coverage if the individual has coverage under a basic or
38 32 standard health benefit plan under Code chapter 513C and this
38 33 provision is effective upon enactment and is retroactively
38 34 applicable to January 1, 2005, and applies on and after that
38 35 date.
39 1 Code section 514E.8, subsection 1, is amended to provide
39 2 that an individual who is covered by an association health
39 3 insurance policy and who is eligible for Medicare coverage
39 4 based on age prior to January 1, 2005, may continue to renew
39 5 the coverage under the association policy.
39 6 Code section 515.138 revises language about intentional

39 7 acts in standard fire policy language which are
39 8 noncompensable.

39 9 Code section 515B.2 is amended to change the date used when
39 10 calculating the net worth of a person for the purpose of
39 11 determining whether the person has a covered claim under the
39 12 Iowa insurance guaranty association.

39 13 Code section 515B.17 is amended to provide a date certain
39 14 when claims must be filed in order to be covered by the Iowa
39 15 insurance guaranty association.

39 16 Code section 515F.36 is amended to change the membership of
39 17 the governing board of the FAIR plan, the plan to assure fair
39 18 access to insurance requirements.

39 19 Code chapter 516E concerning service contracts for the
39 20 repair or placement of certain motor vehicles is extensively
39 21 revised. Code section 516E.1 concerning definitions is
39 22 amended to include the addition of definitions for an
39 23 "administrator", for a "third-party administrator", and for a
39 24 "service company", to redefine "provider" and to redefine
39 25 "reimbursement insurance policy" to specify that such a policy
39 26 is for the benefit of the service contract holders.

39 27 Code section 516E.2 is amended to specify the requirements
39 28 for a service company to issue, sell, or offer service
39 29 contracts in this state, including financial security
39 30 requirements to protect service contract holders in the form
39 31 of a funded reserve in the amount of 40 percent of gross
39 32 consideration received by the service company, and the filing
39 33 of a certificate of deposit with the commissioner in the
39 34 amount of not less than 5 percent of consideration received,
39 35 but not less than \$25,000. Service companies are also
40 1 required to register with the commissioner of insurance and
40 2 pay a \$500 registration fee. Grounds for denial, suspension,
40 3 or revocation of such registrations are also specified.

40 4 Code section 516E.3 is amended to provide that service
40 5 companies and providers, such as auto dealers and other
40 6 sellers, are required to file copies of service contracts with
40 7 the insurance commissioner, including copies of service
40 8 contracts offered for sale or sold, and a copy of the service
40 9 company's reimbursement insurance policy. A provider is
40 10 required to pay a \$100 filing fee. Providers and service
40 11 companies are required to make additional filings concerning
40 12 name or ownership changes or cessation of business.

40 13 Code section 516E.4 is amended to require that
40 14 reimbursement insurance policies must include a statement that
40 15 the reimbursement insurer is obligated to pay the service
40 16 contract holder upon a failure of the service company to
40 17 perform, must include specified terms for termination of the
40 18 policy, and may include the right of an insurer to seek
40 19 indemnification or subrogation against a service company if
40 20 the insurer is required to pay a service contract holder
40 21 pursuant to the policy.

40 22 Code section 516E.5 is amended to require service contracts
40 23 to include information about the service company and the
40 24 service company's obligations under the service contract, a
40 25 statement that the obligations of the service company are
40 26 guaranteed under a reimbursement insurance policy and that the
40 27 service contract holder may file claims directly with the
40 28 insurer if the service company fails to perform under the
40 29 service contract. The Code section is also amended to require
40 30 identification of the third-party administrator and the
40 31 service company for the service contract, to require a written
40 32 termination notice of a service contract, and to allow a
40 33 cancellation period by a service contract holder after a
40 34 service contract has been purchased.

40 35 Code sections 516E.6, 516E.7, 516E.8, 516E.9, 516E.10,
41 1 516E.12, 516E.13, 516E.14, and 516E.15 are amended to apply to
41 2 service companies, providers, and third-party administrators.

41 3 Code section 516E.11 is amended to conform with changes in
41 4 definitions made in Code section 516E.1, to require providers,
41 5 service companies, and third-party administrators to comply
41 6 with recordkeeping requirements, to reduce recordkeeping
41 7 requirements as to individual service contracts, and to update
41 8 recordkeeping requirements to reflect modern technology.

41 9 Providers, service companies, and third-party administrators
41 10 are also required to keep a list of locations where service
41 11 contracts are marketed, sold, offered for sale, or performed.

41 12 New Code section 516E.16 allows the insurance commissioner
41 13 to pursue court action when a person does not respond to
41 14 insurance division orders and requests for information.

41 15 New Code section 516E.17 imposes a net worth requirement on
41 16 service companies, based on the number of service contracts
41 17 issued or renewed in a year, that utilizes the same formula

41 18 and amounts that are used for residential service contracts
41 19 under Code chapter 523C.
41 20 New Code section 516E.18 codifies an existing rule
41 21 concerning public access to the records of an administrator.
41 22 New Code section 516E.19 relates to the administration of
41 23 Code chapter 516E by the commissioner of insurance with the
41 24 assistance of the deputy administrator of insurance.
41 25 Code sections 518.14 and 518A.12 are amended to allow
41 26 county and state mutual associations to invest in United
41 27 States obligations that include open-end management investment
41 28 accounts.
41 29 Code section 520.19 is amended to provide that reciprocal
41 30 or interinsurance contracts are subject to the new premium tax
41 31 rate structure contained in Code section 432.1, subsection 4.
41 32 Code section 522B.17 is amended to provide that if an
41 33 insurer or insurance producer is found to have violated Code
41 34 chapter 522B, that person may be ordered to cease and desist
41 35 from engaging in the illegal conduct and may be assessed a
42 1 civil penalty pursuant to Code chapter 507B. The section is
42 2 also amended to provide that a person who violates Code
42 3 chapter 522B by acting as an agent of an insurer or otherwise
42 4 sells, solicits, or negotiates insurance in this state or
42 5 offers advice or services regarding insurance and who is not
42 6 properly licensed may be ordered to cease and desist from
42 7 engaging in the illegal conduct and may be assessed a civil
42 8 penalty pursuant to Code chapter 507B.
42 9 Code section 522B.17 is also amended to allow the
42 10 commissioner to enforce a cease and desist order by
42 11 petitioning a court of competent jurisdiction. The
42 12 commissioner is not required to file a bond in such an action
42 13 and if the court finds that the person is not in compliance
42 14 with the cease and desist order, the court may find the person
42 15 in civil contempt and may impose a civil penalty against the
42 16 person in an amount not less than \$3,000 and not more than
42 17 \$10,000 and grant any other relief that the court determines
42 18 is appropriate under the circumstances.
42 19 New Code section 522B.17A allows an association with a
42 20 least 25 members to bring an action in district court for
42 21 injunctive relief against a person who sells, solicits, or
42 22 negotiates insurance in violation of Code section 522B.2. The
42 23 section provides that if the court finds that such a violation
42 24 has occurred and enjoins the person from continuing to violate
42 25 the chapter, the court's findings of law and fact, and the
42 26 final judgment and decree of the court shall be admissible in
42 27 any proceeding initiated against the person by the
42 28 commissioner and the person enjoined is precluded from
42 29 contesting the court's determination that a violation of Code
42 30 section 522B.2 has occurred.
42 31 Code section 523A.402 is amended to correct an error in
42 32 language concerning annuity contracts for the purpose of
42 33 funding cemetery and funeral merchandise and funeral services.
42 34 The change will conform the language to changes made in
42 35 legislation contained in House File 2269, which was enacted in
43 1 2004.
43 2 LSB 1155DP 81
43 3 av:rj/pj/5.2